

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PORT OF GRAYS HARBOR,

Appellant,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 532

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250.00 civil penalty under RCW 90.48.350 for an alleged violation of RCW 90.48.320, was heard at a formal hearing before William E. Cullen, hearing examiner, in the Board's office at Lacey on May 8, 1974.

Appellant appeared by E. W. Clocksin, General Manager, and by its attorney, Ernest Ingram. The State of Washington, Department of Ecology, appeared by its attorney, Charles W. Lean, Assistant Attorney General.

Mr. Norman O. Thomas of the State of Washington, Department

EXHIBIT A

1 of Ecology, was sworn and testified. Respondent's Exhibits 1 through
2 10 consisting of documents and pictures were admitted. Mr. Gerrard
3 J. van Deene, engineer of the Port of Grays Harbor, was sworn and
4 testified. Appellant's Exhibit 1 consisting of plans for an oil
5 separator was admitted.

6 Having reviewed the transcript and examined the exhibits, the
7 Pollution Control Hearings Board makes these

8 FINDINGS OF FACT

9 I.

10 Mr. Norman O. Thomas, an employee of the State of Washington,
11 Department of Ecology, received an oil spill complaint and investigated
12 this complaint on the 19th day of June, 1973. He traced the oil spill
13 to the Port of Grays Harbor facility used for cleaning logging
14 equipment. Mr. Thomas discussed the matter with Mr. G. J. van Deene,
15 engineer for the Port of Grays Harbor, and with Mr. Tony Lomak.
16 Mr. Thomas orally recommended that the Port of Grays Harbor put
17 in a separation system, and followed his recommendation with a
18 letter (Respondent's Exhibit 2) dated June 20, 1973, and addressed
19 to Mr. E. W. Clocksin, General Manager of the Port of Grays Harbor,
20 asking the Port to indicate what corrective action would be taken
21 by the 26th of June, 1973. The recommendation of Mr. Thomas was
22 accompanied by the Department of Ecology's guidelines as contained
23 in Respondent's Exhibit 1.

24 II.

25 The Port of Grays Harbor responded by letter on June 26, 1973,
26 indicating that they did intend to install a mud trap and grease trap.

27 FINDINGS OF FACT,
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1 (Respondent's Exhibit 3). Mr. Thomas made no response to Respondent's
2 Exhibit 3. Furthermore, he did not, after June 26, 1973, receive or
3 review or approve plans from the Port of Grays Harbor.

4 III.

5 Mr. Thomas and Mr. van Deene discussed the separator during a
6 telephone conversation on June 26, 1973. At sometime prior to
7 December, 1973, Mr. Thomas visited Grays Harbor and looked at the
8 treatment facility with Mr. van Deene, engineer for the Port of
9 Grays Harbor. Thomas requested changes in the slope of the lot to be
10 made therein and these changes were made.

11 IV.

12 On December 11, 1973, Mr. Thomas visited the Grays Harbor
13 facility. On this particular day it was raining very hard. Mr.
14 Thomas saw oil in the Fry Creek drainage ditch and also saw oil in
15 the discharged water of the separator.

16 V.

17 The recommended time by the Department of Ecology for water to
18 be held in the oil separator is one hour. The minimum time is at
19 least 20 minutes.

20 VI.

21 Appellant's separator was designed to meet Department of
22 Ecology recommendations of a one-half inch rainfall and a one hour
23 separation time for the particular drainage area. However, the water
24 flowing into the separator was coming from sources other than areas
25 for which Appellant had designed. In particular, some water from
26 the roof area discharged through two downspouts into the drainage

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1 area. Thus, water in the separator could have been in an amount over
2 and above that anticipated to meet the optimum recommended design
3 parameters. There is no showing, however, that this water flow was
4 so excessive as to exceed the Department of Ecology standards of
5 twenty minutes minimum settling time. In particular, the probable
6 quantity of water from areas other than the design drainage area
7 affecting the design capacity is not shown in the record. On this
8 basis, no finding can be made as to the inadequate design of the
9 separator so far as its capacity is concerned. The record shows
10 only that some unspecified amount of water entered the design area.
11 It does not show that this unquantified extra water significantly
12 affected the Appellant's design.

3 VII.

14 The Department of Ecology's guidelines (Respondent Exhibit 1)
15 provides that oil accumulation in the oil separation compartment
16 shall not exceed three inches at any time.

17 VIII.

18 There is no evidence that the oil retained in the separator
19 actually exceeded the three-inch maximum depth allowable by Department
20 of Ecology standards. However, there is evidence that oil was coming
21 out of the separator. This could have been caused either by the
22 excessive oil in the separator or by a design defect of the separator
23 that prevented the proper separation of oil and water in the oil
24 separation compartment. There is no evidence in the record of a
25 design defect. However, there is testimonial evidence that shows
26 that a lack of maintenance was the cause of the failure of the

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1 separator to retain the oil.

2 IX.

3 Any Conclusion of Law hereinafter recited which should be deemed
4 a Finding of Fact is hereby adopted as such.

5 From these Findings, the Pollution Control Hearings Board
6 comes to these

7 CONCLUSIONS OF LAW

8 I.

9 The obligation to design, construct, and maintain the oil-water
10 separator is that of the Port of Grays Harbor.

11 II.

12 The Port of Grays Harbor was negligent in failing to adequately
13 maintain an oil-water separator. This failure allowed oil to
14 flow through the separator and ultimately reach the drainage ditch
15 tributary to Fry Creek.

16 III.

17 The penalties assessed for negligently permitting oil to
18 flow into the drainage ditch is appropriate considering the prior
19 efforts of Grays Harbor to prevent oil from reaching the waters of
20 the State of Washington and the amount of oil spilled.

21 IV.

22 Any Finding of Fact which should be deemed a Conclusion of
23 Law is hereby adopted as such.

24 Accordingly, it is the Board's

25 ORDER

26 That the Order of the Department of Ecology assessing a penalty

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1 of \$250.00 against the Port of Grays Harbor for negligently allowing
2 the discharge of oil into the public waters of the State of
3 Washington is affirmed.

4 DATED this 27th day of August, 1974.

5 POLLUTION CONTROL HEARINGS BOARD

6 Walt Woodward
7 WALT WOODWARD, Chairman

8 W. A. Gissberg
9 W. A. GISSBERG, Member
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26 FINDINGS OF FACT,
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